

EXHIBIT N

**Creedon v. Forest Electric and Banc One Building Corp
Angerame, Paul - Vol. 2**
6/14/2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

CREEDON CONTROLS, INC., : CIVIL ACTION
et al. :
vs. :
BANC ONE BUILDING CORP., :
et al. : NO. 05-CV-300-JJF

Wednesday, June 14, 2006

VOLUME 2

Continued oral deposition of PAUL ANGERAME, held
at COHEN, SEGLIAS, PALLAS, GREENHALL & FURMAN, P.C.,
United Plaza, 30 South 17th Street, 19th Floor,
Philadelphia, Pennsylvania, beginning at 3:00 p.m.,
on the above date, before LANCE A. BRUSILOW,
Registered Professional Reporter and Approved
Reporter for the United States District Court.

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1 (It is hereby agreed by and among
2 counsel that sealing, certification and
3 filing are waived; and that all
4 objections, except as to the form of the
5 question, are reserved until the time of
6 trial)

7 PAUL ANGERAME, having been
8 previously sworn, was examined and
9 testified further as follows:

10 (EXAMINATION)

11 BY MR. SEGLIAS:

12 Q. Paul, we're here on a continuation of
13 your deposition. When we last met, we were in
14 Wilmington and we were going through various exhibits
15 related to the project.

16 Before we get started with some more
17 exhibits, though, I would like to talk to you about
18 Creedon's contractor balance on the 6B project.

19 A. Okay.

20 Q. My understanding is that it's about
21 211,000 and a few dollars. Does that sound --

22 A. I don't know the exact figure, but
23 that's... .

24 Q. Sounds about right?

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1 A. Sounds about right.

2 Q. Is Forest in possession of that money?

3 A. I mean, again that may call for a
4 legal... .

5 Q. Well, have you been --

6 A. . .understanding.

7 MR. BRADLEY: The answer is yes.

8 Obviously I'm not under oath, but Forest
9 has possession.

10 BY MR. SEGLIAS:

11 Q. So, Forest has been paid that money by
12 Banc One, which is to be paid by Forest to Creedon,
13 correct?

14 A. If it were to be released by the bank,
15 yes.

16 Q. What is holding the release of that
17 \$211,000, as you understand it?

18 A. As I understand it, a signed lien
19 waiver, final waiver, and I believe the bank also has
20 a position that there is a back-charge that needs to
21 be settled.

22 Q. And how much is that back-charge?

23 A. To my understanding, approximately
24 \$15,000.

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1 contracts with its subs; is that right?

2 MR. BRADLEY: Objection to the
3 form.

4 THE WITNESS: I don't know that
5 they would or would not, but certainly
6 you know, this would change in some
7 manner.

8 BY MR. CHOA:

9 Q. Can you describe in which manner it
10 would change?

11 A. Again, not --

12 Q. Just to your understanding.

13 A. I guess what would be helpful for me
14 is if I were to see the ultimate document that was
15 distributed to the trade contractors, and that would
16 kind of help.

17 Q. We'll probably get to that. You might
18 have discussed this in your earlier deposition.

19 Donna's e-mail to you on 10/15 at
20 11:06, "Please advise of the following," did you ever
21 advise her on this issue discussed in the e-mail?

22 A. I didn't really see it as a question.

23 Q. Do you understand the difference that
24 she's describing there, "If we are to have no

1 there a time, Paul, in your mind where you thought,

2 "Okay, now we have a contract with Tishman," we being
3 Forest?

4 MR. BRADLEY: Objection to the
5 extent that he answered that in a prior
6 deposition.

7 THE WITNESS: There was a point in
8 time where we were engaged or we entered
9 into a formal agreement, and that was
10 sometime, I believe, in the late first
11 quarter of '04.

12 BY MR. CHOA:

13 Q. Now, you had mentioned the letter of
14 intent. What did you mean by that?

15 A. Well, once we evaluated the proposals
16 for a specific RFP, Forest would make an award
17 recommendation to the bank, receive signoff on that
18 award recommendation, and then at that point issue a
19 letter of intent to the trade contractors.

20 Q. Was there any document attached to
21 these letters of intent?

22 A. There was, I believe, a sample
23 subcontract attached to the letters of intent.

24 Q. And what do you mean by "sample"?

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1 exposure, we could use Banc One's form of agreement
2 and place us for Agent for Owner. With the sample
3 Subcontracts being used, we have exposure"?

4 A. I understand what she's asking or
5 expressing.

6 Q. Can you just explain what your
7 understanding is of that?

8 A. Well, she's questioning, I guess,
9 through me what form of agreement is to be used. At
10 this point in time we had just had our letter of
11 intent and sample generic subcontract that's been
12 issued to the trade contractors. I guess what she's
13 expressing is that, in light of this document, are we
14 to use this form of agreement.

15 Q. And at this point, on 10/15/03, did
16 Tishman have a contract with Forest?

17 A. No.

18 Q. Do you remember when the

19 Tishman/Forest contract was entered into?

20 A. (No response)

21 Q. To the best of your memory.

22 A. Again, it sounds as if you're asking
23 me to make a . . .

24 Q. I don't want a legal conclusion. Was

1 A. As it was described in the letter of
2 intent, Forest had not entered into an agreement at
3 that point, and ultimately the agreement that we'd be
4 entering into with the trade contractors would
5 include terms and conditions that were expressed in
6 our agreement.

7 Q. So, what was the purpose of sending
8 the sample subcontract agreement?

9 MR. BRADLEY: Objection to the
10 extent that the letter of intent speaks
11 for itself.

12 THE WITNESS: That in the interim
13 between the time the letter of intent was
14 issued and an ultimate agreement was
15 developed between Forest and the bank,
16 that this would be the basis for the
17 contractor to move forward.

18 BY MR. CHOA:

19 Q. So, the subcontract would contain the
20 terms under which the subcontractor would begin its
21 work; is that correct?

22 A. It would be an outline of the terms or
23 a starting point for the terms.

24 Q. What do you mean by "starting point"?

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1 A. Well, I think the letter does express
 2 that there is no agreement between Forest and the
 3 bank, and that there may be additional conditions
 4 that would apply.

5 Q. And who drafted the subcontract
 6 agreement?

7 A. I don't know.

8 Q. Did Forest Electric draft it?

9 A. I'm not sure where the document came
 10 from.

11 Q. Do you know if Tishman drafted it?

12 A. No. I would say it channeled through
 13 Forest.

14 Q. What do you mean by "channeled
 15 through"?

16 A. Again, I don't know who wrote it, but
 17 I received it from the New York offices.

18 Q. So, you don't know if Forest Electric
 19 drafted it itself or if -- I'm sorry, strike that.

20 So, you don't know who drafted the
 21 agreement?

22 A. No.

23 Q. What were your instructions to do with
 24 the subcontractor when you received it from the New

1 well, or form of agreement.

2 Q. And was a letter of intent and
 3 subcontract agreement that we've been describing sent
 4 to Creedon Controls at any time?

5 A. Yes.

6 Q. And did someone from Creedon Controls
 7 sign and return it to Forest?

8 A. I believe so.

9 MR. CHOA: I'm going to go ahead
 10 and mark this as BB. This was probably
 11 produced before.

12 (Exhibit BB was marked for
 13 identification)

14 BY MR. CHOA:

15 Q. For the record, Paul, can you please
 16 review this letter of intent and attached subcontract
 17 agreement? Was this what was sent to Creedon
 18 Controls?

19 A. Well, this document appears to be what
 20 Creedon Controls sent back to Forest.

21 Q. So, if they sent it back to Forest, I
 22 presume that Forest had originally sent it to them?

23 A. In some form.

24 Q. Did there come a time you sent a

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1 York office?

2 A. To attach it to the letter of intent
 3 when we sent it to the successful trade contractors
 4 for each package.

5 Q. And why at this time, at the time the
 6 RFPs were going on, did Forest Electric not have an
 7 approved form of subcontract to use with its subs?

8 A. Because at that point there was no
 9 formal agreement between Forest and the bank.

10 Q. So, was it Forest Electric's
 11 understanding that the bank or Tishman, as the bank's
 12 agent, would have approval over the form of contract
 13 Forest Electric was to use with its subcontractor?

14 A. Again, I can't form a legal opinion
 15 based on that, but I guess my understanding was that
 16 until that contract was established, that this would
 17 be the basis of the agreement between Forest and our
 18 trade contractors.

19 Q. Was it your understanding that to
 20 establish the form of subcontract Forest Electric
 21 would use, Tishman would have input?

22 A. I guess my understanding is that the
 23 bank was driving the agreement, and that ultimately
 24 the bank would sign off on the form of subcontract as

1 second letter of intent and subcontract agreement to
 2 Creedon Controls for the same 6B work package?

3 A. Yes, that has come to my attention.

4 Q. Do you know why that was done?

5 A. I believe there was a contract dollar
 6 value change.

7 MR. CHOA: I'm going to introduce
 8 this as CC. You can review this and see
 9 if this refreshes your recollection as to
 10 whether Forest sent a second letter of
 11 intent to Creedon.

12 (Exhibit CC was marked for
 13 identification)

14 THE WITNESS: This definitely has
 15 a different dollar value associated with
 16 it.

17 BY MR. CHOA:

18 Q. And do you know why the dollar value
 19 changed?

20 A. I don't remember.

21 Q. Did you ever have any discussions with
 22 anyone at Creedon regarding the terms of the
 23 subcontract?

24 A. No.

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1 Q. Did anyone at Forest Electric have any
 2 conversations with Creedon regarding the terms of the
 3 subcontract?

4 A. Not that I'm aware of.

5 Q. Do you know if these handwritten
 6 notes on the subcontract agreement, were those notes
 7 on the form returned to Forest?

8 A. I wouldn't know. I would not know. I
 9 had never seen them before.

10 Q. And do you know at whose request the
 11 second letter of intent was sent?

12 A. If I knew the circumstances
 13 surrounding the dollar-value change, I might be able
 14 to answer that, but I don't recall the details.

15 Q. Did Creedon request another letter?

16 A. No, I think the reason was a
 17 difference in dollar value.

18 Q. So, then Forest would send -- if the
 19 dollar value changed, as a general practice would
 20 Forest Electric then send a second letter of intent
 21 to reflect that?

22 A. I guess if it was incorrect to begin
 23 with, I believe -- and I believe that was the case.

24 Q. Do you recall at what time,

1 details of the work that's being laid out in these
 2 particular packages, like 6A or 6B.

3 Q. Did you look at any of the other terms
 4 of the contract?

5 A. I didn't review them, but Donna Lucas
 6 may have and had comments regarding them.

7 Q. All right.

8 MR. CHOA: I'll show you this one,
 9 and we're up to DD.

10 (Exhibit DD was marked for
 11 identification)

12 BY MR. CHOA:

13 Q. Do you remember receiving this e-mail?

14 A. Yes.

15 Q. Do you remember what you did when you
 16 received the e-mail?

17 A. I reviewed it. I reviewed the
 18 contract.

19 Q. And did you do the same type of review
 20 that you discussed prior, reviewing scope and some of
 21 the other issues?

22 A. Yes.

23 Q. Did you review any other terms of the
 24 contract?

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1 approximately, Forest Electric received an approved
 2 form of contract to use with the subcontractors?
 3 And by "approved" I mean signed off by
 4 Tishman or the bank or anyone who was obligated to do
 5 so.

6 A. I don't remember exactly.

7 Q. Do you ever remember seeing drafts of
 8 the subcontract agreement from Donna Lucas? To
 9 clarify some terms, when I say "subcontract
 10 agreement," let's keep that as referring to the
 11 treatment that was attached to the letter of intent.
 12 And when we talk about the other form, let's call it
 13 the Banc One form of contract.

14 A. Okay.

15 Q. Did you ever receive drafts of the
 16 Banc One form of contract from you Donna Lucas?

17 A. I believe I have.

18 Q. Did you review those drafts?

19 A. Yes.

20 Q. What did you review them for?

21 A. For scope, scope and terms relating to
 22 change orders, if I recall correctly, markup.

23 Q. And what do you mean by "scope"?

24 A. By "scope" I'm referring to the

1 A. I wouldn't, unless Donna specifically
 2 asked me to, you know, work through a particular
 3 issue.

4 Q. And at this point have you heard
 5 anything from Tishman regarding the terms of this
 6 contract?

7 A. It was my understanding that any
 8 agreement that was going to be submitted to the trade
 9 contractors needed to wait until the master agreement
 10 was established between Tishman and the bank
 11 initially.

12 Q. Do you know if such agreement was
 13 established by February 18th, the date of this
 14 E-mail?

15 A. I don't believe it was, but I'm not
 16 certain.

17 Q. Now, Donna Lucas writes to you, "I
 18 have taken the Banc One agreement and tried to modify
 19 it into a (Draft) subcontract agreement."

20 Do you know why she did that?

21 A. The agreement had to be modified so
 22 the parties were changed to reflect the trade
 23 contractor.

24 Q. Do you know who instructed her to

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1 Tishman is an agent of the bank.
 2 MR. CHOA: Right, I understand
 3 that.
 4 BY MR. CHOA:
 5 Q. When I say "Tishman" I mean Tishman
 6 employees. When I say "Banc One" I mean actual Banc
 7 One employees, not Tishman on behalf of Banc One.
 8 A. No, it would have been through
 9 Tishman.
 10 Q. So, there were no discussions with the
 11 bank regarding Forest's authorization to act as
 12 agent?
 13 A. Not with me.
 14 Q. Now, what happened after this April
 15 12th, 2004 e-mail?
 16 A. After this e-mail we issued this
 17 agreement to the trade contractors.
 18 Q. Can you just clarify what you mean by
 19 "issued"?
 20 A. We modified this agreement to reflect
 21 the scope for the individual packages, and then we
 22 transmitted it to the successful bidders for each of
 23 those packages.
 24 Q. Was such a bank form of agreement sent

1 know.
 2 MR. CHOA: Strike that. I'll
 3 start over.
 4 BY MR. CHOA:
 5 Q. Did Tishman instruct you, as Forest,
 6 to do anything regarding Creedon's failure to sign
 7 the bank form of agreement?
 8 A. Other than expressing some concern and
 9 desire to get the contracts signed.
 10 Q. Was Forest negotiating terms with
 11 Creedon at this time?
 12 A. Terms of the contract?
 13 Q. Right.
 14 A. No.
 15 Q. Did Tishman instruct Forest to
 16 negotiate terms of the contract with Creedon?
 17 A. No. If anything, the form of the
 18 contract was not open for negotiation.
 19 Q. Did there come a time where Creedon
 20 sent comments on the bank form of agreement to
 21 Forest?
 22 A. Yes.
 23 Q. Who did those comments go to?
 24 A. I believe they were e-mailed to me.

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1 to Creedon?
 2 A. Yes.
 3 Q. Did Creedon sign that contract?
 4 A. No.
 5 Q. What did Creedon do?
 6 A. They held on to it for quite some
 7 time -- I don't know the exact duration of time, but
 8 I would say it was two months -- then they issued
 9 some comments on the agreement.
 10 Q. At that time, the two months that they
 11 held on to it, did you have any conversations with
 12 anyone at Creedon about that contract?
 13 A. I didn't personally, but I believe we,
 14 as Forest, called their accounting department to ask
 15 where the signed contract was.
 16 Q. And what did Creedon say?
 17 A. I don't know exactly, but that they
 18 didn't sign it to that point.
 19 Q. Did you ever tell Tishman at this time
 20 that Creedon was refusing to sign the agreement?
 21 A. Yes, they were aware of it.
 22 Q. What did Tishman do, to your
 23 knowledge?
 24 MR. BRADLEY: To the extent you

1 Q. What did you when you received that
 2 e-mail?
 3 A. I forwarded them, I believe, to Donna
 4 Lucas and perhaps to outside counsel.
 5 Q. Outside counsel for Forest?
 6 A. Yes.
 7 Q. Did you review the comments?
 8 A. I read them.
 9 MR. BRADLEY: Just so I can
 10 clarify, you're talking about the
 11 addendum that Creedon sent to Forest?
 12 MR. CHOA: That's right.
 13 MR. BRADLEY: Okay.
 14 MR. CHOA: Actually, I'll
 15 introduce this as FF, which may refresh
 16 or familiarize.
 17 (Exhibit FF was marked for
 18 identification)
 19 BY MR. CHOA:
 20 Q. Does this e-mail look familiar to you,
 21 Paul?
 22 A. Yes, it does.
 23 Q. And you write to Donna Lucas, "At the
 24 time I informed Creedon that no changes would be

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1 accepted."

2 How did you inform Creedon? By that I
3 mean, was there a writing? Was there an oral
4 discussion? Was there another method?

5 A. I would say it would be an oral
6 discussion.

7 Q. And do you remember the details of
8 that oral discussion?

9 A. Not specifically.

10 Q. Do you remember if substantive issues
11 were discussed?

12 A. No, I would say they were not.

13 Q. And do you remember what Creedon's
14 reaction was when you informed them that no changes
15 would be accepted?

16 A. I don't think they had a reaction at
17 that point.

18 Q. Did you do anything else after
19 receiving the e-mail at the bottom of this chain?

20 MR. CHOA: For the record, the e-mail
21 is 6/14.

22 BY MR. CHOA:

23 Q. It's from Pat Creedon to you,
24 attaching the addendum for the comments to the bank

1 Q. So, you sent the second request?

2 A. Correct.

3 Q. Did you receive any response to the
4 second request?

5 A. Ultimately we received – the response
6 to the second request was the addendum that Creedon
7 sent to us by e-mail.

8 Q. The addendum seems to have the same
9 date as the sending of the second request. Do you
10 know which one came first?

11 A. I don't.

12 Q. So, you don't know if the second
13 request was sent as a result of receiving the e-mail
14 with the addendum?

15 A. I don't know the answer to that.

16 Q. To clarify the record, you are
17 correct, the attachments are not correct, so let's
18 just remove everything but the first page and just
19 leave the first page as the only exhibit, just the
20 cover letter.

21 What happened after the second request
22 was sent to Creedon?

23 A. I guess it's a question of timing, but
24 it would appear that we got this...

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1 form of agreement.

2 A. Other than forwarding it to Donna
3 Lucas, I don't believe so.

4 MR. CHOA: I'm going to submit
5 this as GG.

6 (Exhibit GG was marked for
7 identification)

8 BY MR. CHOA:

9 Q. Have you ever seen this letter before,
10 Paul?

11 A. Yes.

12 Q. Now, this is dated June 14th, 2004,
13 and it says "Second Request" and it's sending to Pat
14 Creedon copies of the Single Project Construction
15 Services Agreement. Is that your understanding of
16 this letter?

17 A. Yes.

18 Q. Do you know why a second request was
19 made?

20 A. I'd like to comment that I believe
21 this is attached to documents that weren't related to
22 this first page. But to answer your question, it was
23 sent because we received no response from the first
24 request.

1 Q. This e-mail?

2 A. ...this e-mail at around the same
3 time.

4 Q. Did anything else happen?

5 A. Not that I recall.

6 Q. Did Forest Electric ever receive a

7 signed copy of the bank form of agreement?

8 A. No.

9 Q. Did Creedon ever convey to Forest

10 orally that it approved of the bank form of

11 agreement?

12 A. Not specifically.

13 Q. What do you mean by "not

14 specifically"?

15 A. Well, it appears that I did have a

16 conversation with Pat Creedon and we discussed the

17 fact that there would be no changes accepted.

18 Q. Did she ever tell you "Creedon accepts

19 this contract," this contract being the bank form of

20 agreement?

21 A. No, not as directly as that.

22 Q. Indirectly?

23 A. Again, I'm not making a legal

24 judgment.

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1 CERTIFICATION

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5 I hereby certify that the testimony and
6 the proceedings in the foregoing matter are
7 contained fully and accurately in the stenographic
8 notes taken by me and that the copy is a true and
9 correct transcript of the same.

10

11

12 LANCE A. BRUSILOW
13 Registered Professional Reporter
14 Certified Realtime Reporter

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